

REMARKS

This responds to the Office Action dated February 22, 2008. Claims 38 and 72 are amended. No claims are added or currently canceled. Claim 1-37 were previously canceled without prejudice or disclaimer. As a result, claims 38-80 remain pending in this patent application.

Applicant respectfully submits that the amendments and additions to the claims are fully supported by the specification, as originally filed, and that no new matter has been added. Applicant hereby respectfully requests further examination and reconsideration of the application in view of the following remarks.

Telephone Interview

Applicant thanks Examiner Evanisko for the courtesies extended in conducting a telephone interview with Applicant's representative, Michael P. Horvath, on May 6, 2008. During the telephone interview, Applicant's representative discussed the lined-out references on the previously-filed Information Disclosure Statement. Regarding U.S. Patent No. 5,669,391 and the Heart1.com reference entitled "Study: Heart Stress Test Can Predict Risks", Applicant's representative agreed that the publication dates were listed incorrectly in the previously-filed Information Disclosure Statement and agreed to resubmit the references in a Supplemental Information Disclosure Statement with the correct publication dates.

Regarding the Bell reference entitled "Fight or Flight: In weighing cardiac risk factors, doctors are overlooking autonomic tone", the Examiner contended that no copy of the reference was provided with the previously-filed Information Disclosure Statement. Applicant's representative agreed to resubmit the reference in the Supplemental Information Disclosure Statement, being sure to include a copy of the reference therewith.

Regarding the Roa reference, the Examiner requested that the publication date include a month of publication. Applicant's representative agreed to research the publication month and, if available, include it in the Supplemental Information Disclosure Statement.

Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on December 19, 2006. The Office Action at pages 2-3 contends that the Information Disclosure Statement did not comply with the provisions of 37 CFR 1.97 and 1.98 and MPEP § 609 because the dates were incorrect on some of the documents, which were lined out by the Examiner. As detailed in the telephone interview summary above, Applicant is submitting a Supplemental Information Disclosure Statement with this response to address and correct issues with the previously-filed Information Disclosure Statement identified in the Office Action and during the telephone interview. Accordingly, Applicant respectfully requests that the Examiner enter and consider the four previously lined-out references.

§102 Rejection of the Claims

Claims 38, 40, 41, 42, 50-56, 62, 64, 65, 68, 69, 71, 72, and 74-76 were rejected under 35 U.S.C. § 102(b) for anticipation by Tsuda (U.S. Patent No. 5,980,464). In view of at least the foregoing amendment and the following remarks, Applicant respectfully traverses this rejection.

Applicant cannot find each and every recitation in claims 38, 40, 41, 42, 50-56, 62, 64, 65, 68, 69, 71, 72, and 74-76 in Tsuda. For instance, Applicant cannot find in Tsuda:

- “a processor circuit, including at least one predetermined criteria to automatically identify from physiological data obtained from a patient a beginning and an end of an exercise episode of the patient, and . . . an external display, including a displayed summary of the episode, the summary including at least one displayed prognostic indicator automatically extracted from the data associated with the episode”, as recited in amended claim 38; and
- “a processor circuit, including at least one predetermined criteria to automatically identify from physiological data obtained from a patient a beginning and an end of an exercise episode of the patient, and . . . means for displaying a summary of the episode, including displaying at least one displayed prognostic indicator automatically extracted from the data associated with the episode”, as recited in amended claim 72.

Support for the amendments to claims 38 and 72 can be found throughout the specification. For instance, support can be found in the specification at page 6, line 16, to page 8, line 9, and Figs. 3 and 4. Further support can be found, for instance, at page 13, line 25, to page 15, line 18, and Figs. 2, 4, 5, and 7.

Tsuda appears to describe “an exercise apparatus 4 having an exercise-load changing function to which the present invention is applied. The exercise apparatus 4 includes an ergometer 6 having a pair of pedals 65 which are rotated by a pair of feet of a person such as a patient, and a blood-pressure (BP) measuring device 8 which successively measures a BP value of the person in synchronism with the heartbeat of the person.” (Tsuda at col. 8, lines 22-29.) Tsuda states that “the control of the CPU 30 goes to Step SB5 to issue, to the patient, a message ‘PLEASE PEDAL ERGOMETER TILL YOU ARE DIRECTED TO STOP’ as a voice or an indication on the display device 36. Step SB5 is followed by Step SB6 to judge whether the patient has started pedaling the ergometer 6. If a negative judgment is made at Step SB6, Step SB6 is repeated. On the other hand, if a positive judgment is made at Step SB6, the control of the CPU 30 goes to Step SB7.” (See Tsuda at col. 15, line 66 – col. 16, line 7; and Fig. 7.) Referring to this language of Tsuda, it appears that Tsuda describes prompting a user to begin exercising and then judges the start of the exercise period by whether the patient has begun pedaling. As such, Applicant cannot find any description in Tsuda related to automatically identifying from physiological data obtained from a patient a beginning and an end of an exercise episode of the patient.

Tsuda further describes displaying “a current actual curve 120 representing an actual time-wise change of the pressure-rate products PRP successively calculated by a PRP calculating means 82 . . . so that an observer such as a doctor or a nurse can compare the three curves 116, 120, 121 with one another.” (Tsuda at col. 20, lines 12-22.) However, while Tsuda appears to display a data curve, Applicant can find no description in Tsuda related to a summary including at least one displayed prognostic indicator automatically extracted from the data associated with the episode.

For at least these reasons, Applicant respectfully submits that Tsuda is defective in that Tsuda does not show each and every recitation of claims 38 and 72.

Dependent claims 40, 41, 42, 50-56, 62, 64, 65, 68, 69, and 71 depend from independent claim 38; and dependent claims 74-76 depend from independent claim 72. Accordingly, claims 40, 41, 42, 50-56, 62, 64, 65, 68, 69, 71, and 74-76 incorporate the features of one of claims 38 and 72. For reasons analogous to those stated above with respect to claims 38 and 72, claims 40, 41, 42, 50-56, 62, 64, 65, 68, 69, 71, and 74-76 are accordingly believed to be patentable. For brevity, Applicant defers (but reserves the right to present) further remarks, such as concerning any dependent claims, which are believed separately patentable.

For at least these reasons, Applicant submits that claims 38, 40, 41, 42, 50-56, 62, 64, 65, 68, 69, 71, 72, and 74-76 are allowable over Tsuda and respectfully requests reconsideration and withdrawal of this rejection.

§103 Rejection of the Claims

Claims 43-45, 63, and 77-79 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsuda as applied to claims 38 and 72 above, and in view of Gamlyn et al. (U.S. Patent No. 5,749,367). Claims 39, 49, 57-61, 66, 67, 70, 73, and 80 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsuda. Applicant respectfully submits that obviousness does not presently exist because the references, in combination with the reasoning of the Office Action, do not appear to fully encompass the subject matter of claims 39, 43-45, 49, 57-61, 63, 66, 67, 70, 73, and 77-80.

Claims 39, 43-45, 49, 57-61, 63, 66, 67, and 70 depend, either directly or indirectly, from and incorporate the features of independent claim 38; and claims 73 and 77-80 depend, either directly or indirectly, from and incorporate the features of independent claim 72. Therefore, Applicant submits that claims 39, 43-45, 49, 57-61, 63, 66, 67, 70, 73, and 77-80 are patentable over the references, in combination with the reasoning set forth in the Office Action, based upon at least their dependence from one of claims 38 and 72, which are believed to be in condition for allowance for at least the reasons stated above.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 39, 43-45, 49, 57-61, 63, 66, 67, 70, 73, and 77-80.

Allowable Subject Matter

Claims 46-48 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Each of claims 46-48 depend from independent claim 38. For at least the reasons stated above, Applicant believes claim 38 is in condition for allowance. Therefore, Applicant respectfully submits that claims 46-48 are similarly in condition for allowance, based at least upon their dependence from claim 38. However, Applicant reserves the right to rewrite claims 46-48 in independent form during later examination of the present application or any subsequent patent applications claiming priority thereof.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6951

Date May 22, 2008

By 
Suneel Arora
Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 22 day of May 2008.

Kate Gannon
Name


Signature